

## INSTITUTIONS, PRESIDENTS, AND AGENCIES

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### I INTRODUCTION

The editor of the *American Political Science Review*, the most prestigious and important political science journal, introduced Jon Elster's review of the book *Analytic Narratives* with a note of enthusiasm about the dissemination of the rational choice approach in political science:

The rational choice revolution in political science began in American politics in the 1970s, first influenced international relations in the 1980s, and made its way to comparative politics during the 1990s. As it moved beyond its base in American politics, rational choice theory confronted comparative and historical questions of regime transition, social conflict, democratic stability, economic development, and international governance (Vol 94(3), September 2000).

In this paper, I critically review part of this history. I discuss neo-institutionalism since it was through neo-institutionalism that rational choice established itself in American politics. Originally, the approach dominated the Legislative Studies area. From there it made its way to comparative politics. My discussion concentrates in these two sub fields: American politics and comparative politics. (For comparativists, international relations can be ignored). In a sense, and this is one of the points I want to make in this paper, the comparative field has been strongly influenced by the Legislative Studies approach. The consequence is that the comparative field is not prepared to discuss State reform. Ironically, as regulatory

agencies made their way into Latin America, comparativists were not prepared to discuss their impact.

Practitioners of comparative rational choice neo-institutionalism seem to be proud with their achievements. They are prepared to move on, to conquer new subjects. For instance, one reads in the introduction Haggard and McCubbins (2001 1) wrote for a recently edited volume

A generation of work has shown that institutions affect various political outcomes. For example, numerous scholars have shown that electoral systems shape the behavior of parties, candidates, and voters. Other scholars have demonstrated that different constitutional structures, such as presidential or parliamentary systems, affect regime stability, accountability, responsiveness, and democratic durability.

I am not so sure that what was supposed to have been shown or demonstrated has really been done. There is no doubt that the variables cited—electoral laws and the form of government—have been the working horses of the neo-institutionalist comparative field. However—and this is a point want to make—substantive findings have not been established on solid grounds. This paper main objective is to substantiate this assertion. The demonstration asks for three sections, followed by the concluding remarks.

The second section is dedicated to a brief incursion on methods. My objective is to show that what is proudly taken as the founding stone of the movement, the proof that institutions induce stability on collective choice, is not such a big achievement. The problem the 1979 celebrated Shepsle paper solves is, at most, an interesting theoretical question. It makes sense in one tradition of thought: the so-called social choice approach. This approach precedes the advent of noncooperative game theory as the standard formal modeling technique. In the noncooperative approach, though, the question that obsessed scholars in the early seventies—why so much stability when the theory predicts instability—vanishes. Hence, one cannot say that institutions matter because they induce stability. This is not enough. One needs a lot more. One needs to establish that different outcomes follow from different institutional arrangements. This, I argue, is a much more difficult task.

The third section is dedicated to the reconstruction of the core of the rational choice institutionalism applied to American Politics. I present a very simple review. I do not intend to present an original reconstruction. Quite the opposite. I want to present a non sophisticated review because I believe that it is this non sophisticated view that made its way into comparative politics. True, I construct a sort of a straw man argument, but my point is that it is this straw man that has traveled abroad. At the end of this section I present a summary of the assumptions and premises that “invaded” the comparative field.

The fourth section is dedicated to a brief discussion of the effects—or the alleged effects—of the forms of government over public policy. I take this debate because of its importance for the field. Moreover, I use this discussion to illustrate some of the findings of the previous section. My conclusion is that it may well be the case that parliamentarism outperforms presidentialism. Yet, so far, we do not know why.

The fifth section is dedicated to the discussion of presidentialism and bureaucratic agencies. In reality, I have little original material to present in this section. I have to confess that time constraints forced me to conclude the paper before I could really finish it off. The paper is a work in progress. I just present an outline of what should be an independent section dealing with presidential power and bureaucratic agencies. I intend to develop this section to include an empirical analysis of some aspects of the Brazilian state reform. The definitive version of the paper will have a discussion of the independent agencies created during Fernando Henrique Cardoso's administration.

Concluding remarks close the paper.

## II METHODS AND SOME PRELIMINARY COMMENTS

To start with, one needs a definition of institutionalism. Diermeier and Krehbiel (2002: 4) parsimonious definition is a good place to start:

The method in this kind of research consists of analysis in which institutional features are taken as exogenous and behavioral postulates are fixed, and then compares equilibria that are generated under different institutional arrangements.

The definition is simple and clear. It is a useful point of departure to avoid an infinite regress. If institutions are taken as exogenous, then one does not need to explain its emergence. One might do it, but it is not necessary. For the authors, if one wants to explain the emergence of a given institution, then one needs to step back and start from a given set of institutions to derive the emergence of “the second order institutions” of interest. Obviously, behavioral postulates should be kept constant. As the authors dub it: this is a Russian doll approach.

Although simple, this definition leaves on the side the questions usually associated with the onset of the movement, the Arrow's impossibility and McKelvey's chaos theorems. The problem is not to explain why the choices collectivities make are stable. One does not need to reason from the state of nature. In fact, if considered seriously, the world imagined by Arrow and McKelvey is not really a non-institutional one. In both cases, it is the specific institutional set up, the fact that one can always introduce an alternative to be voted against the status quo, that generates instability.

The Structure Induced Equilibrium (SIE) tradition emerged from social choice theory inheriting its methods and research agenda. The research agenda was motivated

by what leading institutionalists have tended to refer as “the spell of Arrow and McKelvey”, meaning the lack of majority voting equilibrium in multi-dimensional settings. The equilibrium concept used was the core: a point that once chosen could not be defeated by majority vote. However, this tradition did not rely on a clearly established behavioral postulate. The properties of the core were the object of the inquiry. Why would that point be the one chosen was not part of the inquiry. For instance, the McKelvey result relies heavily on myopic behavior.

Austen-Smith and Banks (1998) refer to such approach as the “preference aggregation approach”. One just aggregates preferences under different rules and compares results. What is missing, as noted by Austen-Smith and Banks (1998 261), is the connection between preferences and actions. To return to McKelvey’s result: the power of the agenda setter to move the collective choice through the whole space depends on a series of binary preference relations. In the usual textbook example of this theorem, all but the agenda setter end up worse off at the end of the sequence of votes. In the textbook example, players would be led to that Pareto inferior outcome through a series of cleverly chosen sequence of choices, as if they were actually voting. But, the proof of the theorem does not rely on actual voting. No one votes. Actually, no one does a thing. It is only a possibility. That may happen. Is it likely? The answer for the scholar trained in the non cooperative approach is no, this will not happen. The same holds for Arrow.

Hence, the two theorems do not have an empirical content. They cannot be read as predicting this or that will happen. The point is, to return to Diermeier and Krehbiel, there is no behavioral assumption to link preferences and actions.

The solution proposed by Shepsle (1977) to the so-called chaos problem is not difficult to understand. The key operation is the partitioning of the “multidimensional choice space into subsets of single issues that are voted on one at time”. In so doing, the problem posed by the multidimensionality reduces to a series of choices in a one dimensional space. Since for the one dimensional case, provided that some conditions hold<sup>1</sup>, one can apply Black’s median voter theorem, the partitioning of the space is an essential step for the solution. The second part of the solution is also obtained by a crucial assumption, namely, the separability of the issues. That is, the decisions in one issue (one dimension) do not affect and/or are related to the ones taken in another issue (dimension). Diermeier and Krehbiel (2002 16) note:

The key methodological idea of SIE theory thus consists of transforming a social choice problem in which the core does not exist (multi-dimensional choice spaces) into a more structured problem in which the core does exist. Note, however that such strategy maintains the core as the equilibrium concept.

The solution Shepsle proposes has a correspondence with real world institutions. The partition of the choice space corresponds to the way the American

Congress organizes its decision-making process via a committee system. But, as a social choice model, the proof says nothing about the working of the Congress. Shepsle proves the existence of the equilibrium. The model doesn't say a word about how the identified point will be reached in the real world situation. There is no action. No one chooses or votes anything. So institutions here matter but they matter in a very specific way. All they do is to aggregate preferences in a straightforward way. Descriptive and empirical analysis, to be discussed in the next section, is not directly related to the proof.

The SIE approach has its roots on social choice and cooperative game theory. For two decades or so, noncooperative game theory has been the dominant approach in the field. The superiority of the latter, according to Diermeier and Krehbiel, stems from its equilibrium concept (Nash equilibrium) and its behavioral postulate (individuals always choose their best-response strategies). For the argument put forth in this paper, two consequences of the noncooperative approach deserve special mention.

First, as Austen-Smith and Banks note (1998 274), the cooperative and the non-cooperative approaches have opposite consequences. While the problem with the social choice approach was the lack of a core, for the noncooperative game theoretic approach the problem is opposite: too many equilibrium. Hence, "in this respect the concept of Nash equilibrium is too weak; it places few restrictions in what outcomes might be observed".

Second and to make things even worse, results are sensitive to the specific aspects of the game. Diermeier and Krehbiel (2002 19) take this feature as positive:

The qualitative features of the Nash equilibria are highly sensitive to the precise details of the game forms. From the very beginning this fact precludes any notion of an 'institution-free' theory. Rather, the potential fruitfulness of the game-theoretic approach stems from the simple fact that it explicitly models some features of political institutions, and therefore, highlights *how* and *why* institutions matter

However, as Kreps (1992 94) noted, the dependence on the model specification cuts both ways. True, one may be able to compare different results as one varies the institutional set up. But it also means that game theory "requires models of competitive interaction that are very exact and precise as to the strategies available to the players". Some interactions may not provide such clarity. Besides, the way the modeler conceives the options available to the actors may drive the results. Hence, predictions depend heavily on the way the modeler translates the real world situation into a game form.

Hence, the apparently simple approach proposed by Diermeier and Krehbiel raises a series of problems for neo-institutionalism understood as a method. Can such an apparent parsimonious method provide us with clear-cut answers? Will the

analysis provide the analyst with a restrict set of meaningful outcomes to compare? Will the political process generate different outcomes as institutions differ? Will the results depend on the way the model restrict the actors' options?

All things considered, what comparativists take as the great achievement of neo-institutionalism —the 1979 Shepsle proof that institutions induce equilibrium—is not such a big achievement. It cannot be taken as the founding stone of institutionalism. The field research agenda cannot be defined by the search of equilibrium or stability. The real problem with institutional analysis is quite the opposite. To quote Kreps (1992 95): one has “too many equilibria and no way to choose” among them<sup>2</sup>.

### III AMERICAN POLITICS: LEGISLATIVE STUDIES AND THE DISTRIBUTIVE APPROACH

Rational choice took over the American politics field carrying the neo institutionalism flag. As far as policy predictions were the concern, the claim that institutions matter had a clear meaning. The democratic process leads to distributive policies. Costs are dispersed and benefits are concentrated. Hence, from the substantive point of view, the first vintage of American politics of neo institutionalism is associated with the distributive approach and its application to the study of legislatures.

At first sight, the distributive approach to congressional politics seemed to fulfill the promises of neo institutionalism: one could predict outcomes from assumptions about individual behavior and a precisely defined institutional set up.

Fiorina and Noll (1978 256) establish in a comprehensive and direct way the point of departure of this type of analysis:

We assume that in choosing among alternative political actions, voters, bureaucrats, and politicians pursue their self-interests. For voters, this means casting votes in a manner that maximizes expected utility, given the platforms of competing candidates. For bureaucrats, this means maximizing some measure of the size of bureaucracy. For politicians, this means maximizing the probability of election.

As Shepsle and Weingast (1984 345) explain, for members of Congress, the reelection goal translate into a specific strategy:

Members of Congress, at least since the turn of the century, have been motivated by two strong desires: to secure reelection by serving their constituents and to develop a personal power base in Congress. That is the system. Moreover, to strengthen their power bases and to provide for constituents, members have, with considerable success, altered the very ways Congress conduct business. In so doing, they have produced a policymaking machinery that often serves more general public purposes only as an incidental by-product of these political objectives.

Members of Congress use their mandates to pursue their objectives. As a member of Congress, representatives may design policies that help themselves to obtain their objectives. This is the secret. It explains why representatives have been so successful in the electoral arena. It has been accepted as an uncontroversial fact that reelection rates are very high in the US Congress. An incumbent defeat is a rare event. Party swings and presidential coattails also lost their importance. The Representative, no matter his or her party, is alone, is responsible for his or her electoral fate. It all depends from his or her capacity to use the mandate to develop a personal electoral basis.

The description of the institutional set up that favors the attainment of this objective is well known. The Legislative decision making process is organized around the committee system. Committees have well defined policy jurisdictions over policy areas (say, agriculture, industry etc). Bills are reported to one and only one committee that has the monopoly over the legislative initiatives in its jurisdiction. Hence, the status quo in a given area cannot be changed without the initiative of the committee.

Representatives choose the committees they want to join without any control from the parties or the leaders. They self-select themselves into the committees that have some say on what matters for their district. That is to say, electoral considerations drive the distribution of representatives through the different committees. It follows that committees are composed by “preference outliers”. That is to say, the preferences of the committee members on the issues that are under its jurisdiction are more extremist than the ones of the floor. That amounts to say that committee members will favor an activist role of the state in the area under its jurisdiction. At least, a much more activist state than the median floor representative would want. To sum up, this is a model in which minorities rule.

Committees (and the sub-committees, in some accounts) are the key actors to define the outcomes of the decision-making process. Their members’ interest define the policy congress adopts. In this set up, committees are the real centers of power. The match of the socio-economic characteristics of the district with the committee jurisdiction plays a central role in the argument. As Shepsle and Weingast (1984: 350) put it:

Policies, as a consequence, are victimized by two territorial imperatives emanating from the legislative branch – geography and jurisdiction, constituencies and committees – which help explain the past decade’s growth in federal budgetary commitments.

In other words: programs and policies will be tailored to attend the interests of those seated in the committees (or sub-committees). Given the self-selection appointment norm, these members are the ones with high stakes on the areas

under their committee jurisdiction. The committee controls the policies that matter for the district.

Although, committees are not representative of the floor, the floor will approve policies the bills the committees report. Why and how they do so, it is not clear. At least, there is no institutional foundation for such voting trade (Krehbiel 1987). One non-institutional explanation is deference. The floor recognizes the superiority and the greater specialization of the committee. It has also been argued committees trade votes among themselves. The line is: as long as the others vote for my most electoral profitable policy, I will vote for theirs. But this is only one among many other possible outcomes and one needs more than a plausible story.

This point deserves emphasis: the model misses a key element. There is no explanation for the floor behavior. The floor has no rational basis to delegate power to the committee. The point missing is related to problem identified with SIE. There is a behavioral postulate missing. If the relation of the floor with the committee follows the standard noncooperative assumption, no such a delegation should happen. Although this criticism was raised at the onset of the movement, it contributed little to decrease the influence of the distributive approach<sup>3</sup>.

In this set up, the floor does not deliberate. Given the supposition that committees are composed by “preference-outliers” with homogeneous preferences, committees do not deliberate either. The decision making process is a mere aggregation of pressures emanating from the districts.

The consequence of this type of committee power to the budget, as Shepsle and Weingast (1984: 353) put it, is obvious: “there is a predisposition to increase spending”. Overspending —or an interventionist state—is accompanied by a greater attention to the district needs and a lesser attention to the national interest. In fact, given the politicians’ objective and this institutional set up one can predict all sort of inefficiencies in the programs congress approve. For instance, since a new program must gain majority support, Congress will prefer programs that spread benefits across many districts. The consequence for Shepsle and Weingast (1984 358) is that

too little of the program is achieved relative to the amount of resources spent. In some cases (such model cities), this transformation may be so complete that is not clear whether the program’s objectives are achieved at all!

Another inefficiency, according to the same authors, comes from the bias in favor of programs that follow a political and not standard cost-benefit economic analysis. This implies the possibility of divergence between the two criteria, the political and the economic. In fact, one can reason that politicians will prefer programs that are larger than the ones economists would choose. Economic costs may be transformed into political benefits. The number of jobs created by a program provides a good



example. Jobs are politically relevant inputs for politicians struggling for votes. Over-contracting may bring more votes. The same logic applies for the search of the suppliers of intermediaries products. Politicians will favor district suppliers, with no regard to its efficiency. Examples could be multiplied.

As a pattern, public policy will take the classical distributive form. A distributive policy, to follow Fiorina and Noll (1978 256) definition, is one that

is divisible into subactivities, each of which is evaluated and decided upon separately and is beneficial to a relative small proportion of the electorate. Examples are federal constructions projects, categorical grants, and commodity-specific tariffs.

The “electoral connection” imposes a political logic toward state expenditures. Politicians favor distributive policies because those are the ones that provide the best electoral return. For the constituency, the representative appears as the providers of goods, services and programs. Of course, voters pay for these state services. But the payment is diffused via the tax system that applies to all and, besides, is confusing. Costs are spread. Benefits are concentrated.

The “conspiracy” between geographic (the districts characteristics) and the jurisdictional committee control over policy areas tell us the whole history. We know the structure of the incentives politicians have and we know institutions pose almost no constraints on the ways their goals may be pursued. They hide the costs and provide concentrated benefits for voters in their district. This “conspiracy” explains policies after all “the method of producing some public goods or service, and consequently the incidence of spending, is endogenous -it may be selected for its political consequences” (Shepsle and Weingast 1984 356).

There are other conspiracies to consider. There is a “conspiracy” that matches the committee with the bureaucratic agency. Politicians do not provide the benefits themselves. They need the help of bureaucrats. For the bureaucrats, as we saw above, the greater the bureaucracy, the better. Thus, there is space for politicians and bureaucrats to collude around the level and type of services they provide for voters. It is easy to see that they are in condition to choose services that are beneficial for both. In short, as Fiorina and Noll (1978 257) argue

Legislators and bureaucrats have an incentive to provide government services in an excessively bureaucratized manner. To do so raises the demand for facilitation services (...) As the public bureaucracy grows larger, the importance of the performance of facilitation will grow, and a legislator who is a good facilitator will be increasingly likely to be reelected. A challenger who is unproven as a facilitator is a riskier choice than an effective incumbent, and consequently provides a lower expected payoff in this role<sup>4</sup>.

There are too many versions of this argument. One may also take it from a different angle and include the “special interests” into the picture. The expressions coined to grasp the essence of these descriptions are well known: “policy subsystems”, “cozy triangles” “whirlpools”, “subgovernments”. The accent may change from one approach to the other, but the thrust of the argument remains the same.

For the rational choice view, the first point to emphasize is that these actors - politicians, bureaucrats and special interests—are in equilibrium. Morris Fiorina (1989 122) makes the point clearly in the following passage:

Committee members enjoy the opportunity to exercise great influence in a particular area—given the pattern of committee assignments, often an area of considerable concern to their districts. The agency receives support from the committee. The clientele gains benefits from the program, and the circle closes when the clientele provides support for friendly committee members. Heterogeneity of interests across districts and states underpins the system. One congressman cares about federal water projects but not federal workers, while another congressmen has the opposite concern. Both are politically better off if they implicitly trade for the right to exert disproportionate influence in the area of greater concern.

Note the choice of words. Fiorina does not say that voters receive the benefits in the district. One may read *cliente* meaning voters or special interests. Special interests may finance campaigns. Hence, the ambiguous term *cliente*: voters or special interests are the same. According to widespread view, voters may be bought or fooled by campaigns.

Hence, committees govern. The floor delegates to committees and committees take full advantage of the delegation. In other words, the business of governing is decentralized and fractionalized. There is no center capable of considering all the consequences of the governmental action. Hence, state policies will lack coherence. This is the problem with the American political system. Once more, Fiorina (1989 4) provides a good summary of this view:

There is a Washington establishment. In fact, it is a hydra with each head only marginally concerned with the others’ existence. These establishments are not malevolent, centrally directed conspiracies against the American people. Rather, they are unconsciously evolved and evolving networks of congressmen, bureaucrats and organized subgroups of the citizenry all seeking to achieve their own goals. Contrary to what is popularly believed, the bureaucrats are not the problem. Congressmen are. The Congress is the key to the Washington establishment. The Congress created the establishment, sustains it, and most likely will continue to sustain and even

expand it. But I emphasize again that the disturbing aspects of the Washington establishment follow from the uncoordinated operations of the overall system, not from any sinister motivation of those who compose it.

There is a clear parallelism between the interpretation Fiorina puts forth in the two passages I just quoted and the interpretation of the interest group pluralism school, as for instance Theodore Lowi. Several other views reach similar conclusions. One may wonder if other than the method, rational choice did offer a novel interpretation of the working of the American political system. The contribution is subtle but it does exist. To establish the contrast between these two accounts, I quote a passage in which Lowi (1979 74) is describing agriculture programs:

Due to the special intimacy between federal agriculture programs and private agriculture, each administrative organization becomes a potent political instrumentality. Each of the self governing local units becomes one important point in a definable political system which both administers a program and maintains the autonomy of that program in face of all other political forces emanating from other agriculture systems, from antagonistic farm and nonfarm interest, from Congress, from the secretary, and from the president.

The politics of each of these self-governing programs is comprised of a triangular pattern, with each other supporting the other two. The three points are: the central agency, a congressional committee or subcommittee, and the local or district farm committees. The latter are also usually the grass-roots element of a national interest group.

Democratic government degenerates into the government of the few. Policy is captured by special interests. Delegation of power from the center to the periphery of the system is a common element in these arguments. The debate among these interpretations revolves around the identity of the greater beneficiary: politicians, bureaucrats or special interests. The identity of the great loser is not disputed: the people. Hence, we have a variation of a classical theme. Democracy endogenously degenerates into the government of minorities. The state does not act to promote the interests of the people.

One of the distinctive features of the rational choice institutionalism is to argue that politicians are the greater beneficiaries. At the origins of the movement, lies the discovery of an empirical pattern: the vanishing of the marginal districts. After World War II, reelection rates skyrocketed. Politicians, more specifically, Representatives, are getting what they want. As Fiorina puts it: "Congress is the problem". Congress creates the Washington establishment and benefits from it. Shepsle and Weingast (1984 : 366) assert that it should be so:

Professional politicians possess ingenuity, an entrepreneurial spirit, and adaptability. Legislative institutions and policies they foster reflect this central fact. Legislators, motivated to secure reelection and legislative influence, devise institutions to further these objectives.

In other words: rational politicians will always devise the institutions' Mayhew hypothetical planners would do: a committee system. Since some may not know the passage —some readers may have other background than political science— this is how Mayhew (1974: 81-2) explains the specific characteristics of the American Congress

The organization of Congress meets remarkably well the electorate needs of its members. To put it another way, if a group of planners sat down and tried to design a pair of American national assemblies with the goal of serving members' electoral needs year in and year out, they would be hard pressed to improve on what exists.

Rational politicians are rational institutional planners. One could do no better. To create a committee system with clear jurisdictional boundaries is the best way to meet politicians' objectives. But, note that this argument goes against institutionalism defined as a methodology. Institutions, if this is the case, do not constrain behavior. Legislators build the institutions that best serve their needs.

As the most basic interest of the politicians —their concern with reelection— explain institutional features and the policy outcome, rational choice approach dilutes itself into a modified pluralism: politicians take the place of the special interests. Besides, methodological individualism takes functionalist tones —after all, institutions are explained by their consequences—a most ironic twist (See Krehbiel 1991).

Let me stress another specificity of the rational choice legislative studies approach: Congress controls the bureaucracy, including the so-called independent agencies. This is a point discussed at length by Terry Moe (1987). As argued by Moe, Congressional dominance is demonstrated noting that committees control the budget, exercise oversight through several devices, and control appointments (Moe 1987 478). There is no need to go any further. I will not present the models employed and/or the fit of the theory with the facts. Moe has already done it and I could not do a better job than him. What I want to emphasize is that is a specific position in a larger debate. The bureaucracy does not control or have autonomy to set up policies. Agencies are creatures of the Congress<sup>5</sup>. The comparative field bought this Congress centered version of the administrative state as if it were the unique one.

As a Congressional centered theory, this approach also reserves a secondary role for the president. In fact, the president is a later comer to the formal modeling of the American political system. For a long period, the legislative studies simply ignored the

role played by the presidency. Her coming to the scene has been recent. Even now, the role the president plays in formal model is a limited one. The presidential power is the power to veto—or to threaten with a veto. As Moe<sup>6</sup> has noted, this reduces the power of the president to a simple point in the space, a power that is not much different than the one held by the filibuster senator. Clearly, there is something missing here.

This is a mostly ironic feature. For the comparative field, the choice of the form of government and its consequences is the institutional debate. If institutions were to matter, they should matter in this crucial and fundamental choice. In fact, as the transition literature wanted, the debate over the effects of the forms of government dominated the field. But as I argued above, neo institutionalism was badly equipped to understand the role presidents play in separation of power systems. Not a good start. I discuss this point in the next sections.

To sum up, the Legislative Studies Institutionalism has methodological and substantive features. On substantive terms, it may be read as an interpretation of the way the American administrative state works. It is not a totally original contribution. It shares with other interpretations, the emphasis on the fragmentation of the administrative state. American political system lacks a center that coordinates the action of its parts. As Fiorina puts it: it is a hydra.

It also shares with others interpretation what one may call a populist tone. The big looser is the people. But, legislative studies take the special interests, the president and the bureaucracy out of the main picture. This is, I believe, peculiar to this interpretation. Congress is taken as the center of American political system. The administrative state—an excessively bureaucratized state—is a congressional creature. Hence, the greater beneficiary: the politicians that control Congress. These specific tones have been adopted by the neo-institutional comparative literature. This influence will be the subject of the next section. One may derive all that matters from politicians—in fact from Representatives—interests.

Before closing this section, I want to discuss the role that voters play in this account. One may note that the view I reconstruct relies heavily on politicians' shrewdness. They are able to design the institutions—including the internal organization of the Congress, the electoral laws and the bureaucracy—to serve their electoral needs in a highly efficient way. Voters, as we saw, are the losers. But why would voters let politicians—or the special interests, or the bureaucracy or even the president—behave in this way? After all, aren't voters the sovereign?

Recall that Fiorina and Noll assume that voters are not different than bureaucrats and politicians. They maximize their expected utility as much as the other relevant actors do. Why would they vote for such politicians? Rational voters, one could imagine, could do better than that.

Considerable ingenuity has been devoted to this point. Rational voters are at the foundations of the democratic machinery. The result is not the one they would favor.

The explanation provided by Fiorina and Noll (1987 257)<sup>7</sup> is an ingenuous one:

The electoral process does not check this tendency because voters face a prisoner's dilemma in choosing among candidates. If voters disapprove of excessive bureaucratization, electing a legislator who attacks bureaucratic inefficiency will be unlikely to alter the outcome of a majority-rule legislature, but will produce a less effective facilitator.

Alternative views have a more negative view of the electorate. For instance, in some accounts voters are considered ignorant with the twist that it is rational to be ignorant<sup>8</sup>. For others, they may be simply bought or convinced of anything via propaganda. In this sense, Fiorina and Noll's view is a benevolent one. They do not attribute to voters insufficiencies the distortion and the pathologies of democracy. Yet, this does not seem to be a good explanation. It is clear that a group of politicians could offer policies that would solve voters' collective action problem. A group of politicians offering these policies—say, a party—would win any election. Clever politicians—and they are very clever on these accounts—would not miss this opportunity.

#### IV FORMS OF GOVERNMENT

The form of government figures in the comparative literature as a kind of first principle, *i.e.*, as a variable from which everything that matters can be derived. The variation of the form of government has been associated with the probability of crises, party discipline, economic growth, bureaucratic performance and so on so forth. The argument is well known: the constitutional definition of the powers assigned to the Executive and to the Legislative affect the strategies politicians will pursue. More specifically, it affects the incentive politicians have to cooperate with one another and, thus, with the government.

Under parliamentarism, members of the legislative body have incentives to cooperate with the Executive. This is the essence of the fusion of the executive and the legislative powers. The majority (but see below) of the legislature have their fate associated with the fate of executive. Their mandates are linked to the survival of the government. Under presidentialism, there are no incentives for cooperation. This is a consequence of the very definition of a presidential system: the chief executive and the legislators mandates are fixed and independent. Presidents do not have the weapon Prime Ministers have, namely, to threaten to cut short what legislators care the most: their mandates.

In this section, I review the basic arguments put forth in this debate. I show that the characterization of the presidential system is highly dependent of the legislative studies view of politics presented in the previous section. Politicians—I should say,

legislators—basic interests drive all the argument. I note the logical inconsistency of the contrast build on such basis. I also show that attempts to move beyond this view have not been very successful. The problem in these cases is due to choice of paradigmatic cases. Characteristics of the US political systems are taken as characteristics of all presidential systems. That is, all presidential systems are treated as coequal with the American system. The internal variation of presidential systems is not taken into account. Conversely, the same type of reasoning is applied to England and parliamentarism.

The contrast parliamentarism versus presidentialism is made considering that any form of government faces a majoritarian imperative<sup>9</sup>. Without assembling a majority in the legislature, any government, no matter its form, will not be able to govern. If this is the case, if the government does not have the support of a majority, the political system is deadlocked, faces a governability crisis or you named it.

Parliamentarism, according to this view, is a regime in which the government, in order to come to and stay in power, must enjoy the confidence of the legislature. Since these are systems in which decisions are made according to majority rule, it follows that no government that does not enjoy the support of a majority will exist under parliamentarism. Minority governments could occasionally emerge, but these would be relatively infrequent and necessarily ephemeral occurrences, which would reflect the temporary inability of the current majority to crystalize. This inability is temporary for the system contains automatic correctives for these situations: either a new government supported by a majority will be formed or, if this is not possible, new elections will be held so that such a majority may emerge.

Presidential regimes, in contrast, do not have a built-in mechanism to overcome the majoritarian imperative. Voters, under presidentialism, have two agents who, by design, do not necessarily represent the same majority. These agents have fixed terms in office and do not depend on each other to exist. As a consequence, there is nothing in the system that guarantees that the executive will enjoy the support of the majority in the legislature. If this situation obtains, then the most likely outcome, it is believed, is stalemate and impasse between the executive and the legislative, which can ultimately result in the collapse of the democratic regime.

There are, however, empirical reasons to doubt that one may distinguishes parliamentarism and presidentialism following this line of reasoning. In the first place, as conclusively demonstrated by Strom (1990), it is not true that parliamentary governments will necessarily produce majority governments, and most importantly, it is not true that, when they do not, the minority governments that emerge should be seen as a sign of crisis or of malfunction of the political system. Indeed, according to his and other counts, about one-third of governments in parliamentary regimes are formed even if they control less than 50% of the seats<sup>10</sup>. More importantly, Strom's analysis shows that minority governments are not a function of political

instability or system malfunction. Rather, according to him, the emergence of minority governments can be explained in terms of the calculus made by party leaders about the costs and benefits of participating in government, given that they are concerned not only with achieving office, but also with the policies that are to be implemented by the government and the consequences of holding offices on the next election. This calculus, Strom argues, is affected by the degree of policy influence parties can exert out of the government, as well as the competitiveness and decisiveness of the electoral process<sup>11</sup>.

Note that Strom and others account of minority government take into account governments supported by coalitions, that is, situations in which no party controls the majority of seats. Thus, in multi party systems, minority governments are tantamount to failure to form a majoritarian coalition. Hence, that means that there are parties that could but do not hold portfolios. If the politicians' strategies were exclusively driven by their desire to hold office, then this should not happen. One would always prefer to hold a portfolio over not holding one. Yet, as Strom argued, parties may prefer to influence the policies the government chooses instead of gaining the perks that comes with holding a portfolio.

Turning to presidentialism, there is evidence that minority presidents, although frequent, are not as widespread as one would expect them to be. If we count presidential and mixed regimes between 1946 and 1996, we find that in about 61% of the years the party of the president did not control a majority of seats in Congress. This rate is lower if we only consider pure presidential regimes (58%), particularly in unicameral systems (48%)<sup>12</sup>.

Obviously, these cases, however, do not occur randomly. As one would expect, the frequency with which the party of the president does not hold a majority in congress increases markedly with the number of effective parties. That is to say, is higher when legislative elections are held under proportional representation systems. But, more importantly, when they occur, minority presidents are not conducive to the breakdown of the regime: presidential regimes are as likely to die when the president controls less than 50% of the seats in congress as when they control more than 50% of the seats in congress.

As to deadlock, it is not the case that it is pervasive and that it is associated with regime breakdown under presidentialism. Note, to begin with, that deadlock will only occur when the preferences of a majority cannot prevail. These situations, however, do not depend exclusively on the share of seats controlled by the party of the president in congress. It also depends on whether the president has veto power; on the type of congressional majority necessary to override the presidential veto; on whether the system is unicameral or bicameral; and whether, in bicameral systems, veto override is by a vote in each chamber separately or in a joint session of both chambers. When these factors are taken into consideration, one can, in fact,



distinguish three situations: the situations in which either the president or the opposition “rules” and the situation in which deadlock may emerge. The latter will only occur when the president is likely to veto a bill approved by a majority in the legislature, but that majority is not sufficient to override the presidential veto. If the president vetoes a bill and the opposition has enough votes to override the presidential veto, then the opposition “rules.” If the president signs the bills that were approved by his/her majority in congress, then the president “rules.”

Thus, once we consider both the political and the institutional conditions that may generate deadlock, we find that the relationship between minority presidents and deadlock situations is less than perfect and, most importantly, that presidential regimes are not more likely to die when deadlock situations exist.

As to parliamentary regimes, the argument is that deadlock will never occur. Indeed, parliamentary regimes are designed in such a way that whenever there is a deadlock between the government and the legislature, either the government changes or the legislature changes. Thus, although divided government may also exist under parliamentarism (for example with minority governments), divided government in parliamentarism cannot produce deadlock, at least not deadlock in the same sense that we think of it under presidentialism.

Yet, the fact that under parliamentarism there is a mechanism that can be invoked in the face of policy conflict between the government and the legislative majority does not mean that this mechanism will always be invoked, or that, once invoked, it will necessarily put an end to the disagreement that led to its use. In other words, the existence of a mechanism for dealing with conflicts between the government and the legislature does not mean that the conflict will be resolved whenever it appears. For this reason, deadlock may also occur in parliamentary regimes. It will probably assume a different form than deadlock in presidential regimes, but it will nonetheless be present.

One interesting case is suggested by Denmark. The post-1973 period witnessed the emergence of a curious norm regarding executive-legislative relations, which entirely violates what we would expect to see happening under a parliamentary form of government. Before 1973, as Damgaard (1944) demonstrates, governments expected parliament to pass proposals it introduced and not to pass proposals that the government did not want to see passed. Opposition parties would not insist on a vote that would mean a government defeat, unless, of course, “the purpose was actually to defeat the government” (p.31). In line with the “norms of parliamentarism,” a government defeat on a vote of some importance would lead either to resignation or to new elections. After 1973, however, but in particular in the 1980s, “the government accepted numerous defeats in more or less important matters without resigning or calling elections.” (p.32). Thus, during the “fourleaf-clover” governments of 1982-88, “the government lost every twelfth final division” (p.33):

of 1356 votes taken during this period, the government lost 108 and in 105 of them “it decided to accept the defeat without applying sanctions in order to stay in office” (p.34).<sup>13</sup> Hence, it is not at all clear that parliamentarism guarantees an automatic resolution to disagreements between the executive and the legislative.

Another significant illustration is provided by Greece, where it took three elections and five governments in the short space of 10 months to resolve the impasse that had emerged during the government of Andreas Papandreu. The solution that eventually emerged was itself not perfect: the government that emerged from the April 8, 1990 election headed by the New Democracy party controlled exactly 50% plus one seats in parliament; this government became possible only after the external support of the one member of the center-right Democratic Renewal was secured. It is clear, therefore, that the built-in mechanism available in parliamentarism for the resolution of impasses may fail depending on whether the conflict is a reflection of the distribution of preferences in the population and on the current elite’s reaction to these preferences.<sup>14</sup> The point to be emphasized, thus, is that, although at any given point in time parliamentary institutions seem to contain the solution to a deadlock situation, there is nothing that guarantees that a solution will be found.

As a matter of fact, one of the traditional arguments in favor of presidentialism emphasizes precisely the point that parliamentary regimes do not guarantee that there will always be a government (Sartori 1994). Parliamentary regimes will produce stable governments only when some additional political conditions obtain (such as a non-fragmented party system, composed of disciplined parties). Presidentialism, in turn, would be able to produce a government even under very adverse political conditions.

But, so far, one possibility has not been considered, namely that a minority president may count with the support of a party coalition in the Legislature. When no party holds a majority in a parliamentary multi-party regime, the most common outcome is a government backed by coalition. Presidents, the usual argument goes, can rely only on his own party. Coalitional government does not seem to be a feasible alternative.

As an empirical matter, coalition governments are not at all foreign to presidential regimes. The most complete study of this topic is the one produce by Deheza (1997) who considered governments in 9 South American presidential democracies between 1958 and 1994. She found that, of 123 governments observed during this period,<sup>15</sup> she finds that 69 (56%) are coalition governments, of which 24 are minority coalition governments. She also finds that a significant share of coalition governments is formed after the election. There were 59 governments formed as a consequence of presidential elections; of these, 30.5% were coalition governments based on pre-electoral agreements. Of the remaining 41 governments, 17 (41%) were post-electoral coalition governments.<sup>16</sup>

The question that one must ask, of course, is the one about what keeps the coalition together in presidential regimes. In parliamentary regimes, the often cited mechanism that should be sufficient to keep coalitions together is inherent to the regime: the risk that governments will fall if a coalition member defects. This mechanism is obviously absent under presidentialism, and hence parties will face no costs of defecting from coalitions. Although this is obviously a difference between the two regimes, it does not follow that it is sufficient to induce coalition behavior in them. That this behavior is considerably more complicated can be seen from the following hypothetical examples.

Imagine, in the first place, a country with a parliamentary system in which elections are held and no party obtains a majority of seats in the legislature. As a result a (minimum winning) coalition government is formed. A few months into the term some exogenous crisis hits the country and the government is required to implement measures that go against the positions of one of the coalition partners. This party's decision about what to do will depend on which of the two alternatives is less costly to it. It can choose to support the government against its own positions at the cost of promoting a policy that is not its preferred policy and perhaps at some electoral costs in the future. Or it can choose to vote against the government, thus blocking the implementation of policies that it does not like, but paying the cost of facing another election and eventually staying out of office. One can see that the party will choose to support the government only if the costs of anticipated elections are higher than the inherent and future electoral costs of deviating from its policy preferences. There is no reason to suppose that this will always be true. But this is what we have to suppose to believe that parliamentary regimes will necessarily induce coalition governments.

Now imagine a similar situation under presidentialism. Faced with the choice of supporting policies that it does not like, that party does not have to consider the cost of anticipated elections. But it still has to consider the costs of promoting a policy that is not its preferred policy, the eventual electoral costs of this decision, and the certain costs of being out of office. Again, there is no reason to suppose that these costs will be necessarily smaller than the costs of remaining in power and supporting the government. But this is what we have to do in order to believe that presidential regimes will necessarily lack inducements for coalition participation.

Thus, the view that under presidentialism legislators and parties lack incentives to cooperate with the government depends not so much on the fact that this is a system of separation of powers, but on the assumption that all that the actors care about is to come to and stay in office. As I have shown above, if one applies this assumption to parliamentary regimes, one cannot explain, among other occurrences, minority governments. So, nowadays, models of government formation under parliamentarism (see for instance, Austen-Smith and Banks 1988) assume that

voters care for policies as well as for offices. If we hold the same behavioral assumption for presidentism, then one is forced to conclude that minority presidents are not doomed to fail. If politicians under presidentialism care about policies than they may opt to cooperate with the president. Presidents can form coalitions and govern with its support.

In fact, Przeworski, Cheibub and Saiegh (2002) have show that standard game-theoretical model of government formation under parliamentarism, the one proposed by Austen Smith and Banks (1988), can be accommodated to the presidential institutional set up. The authors show that substantive results do not depend heavily on the form of government. That is to say, if one follows Diermeier and Krehbiel advice, that is, if the behavioral assumptions are kept constant while the institutional set up, and only the institutional set up varies, then the alleged differences between the two forms of government disappear. When one gets differences, it is because the behavioral assumptions vary with the institutions. In the case of the incentives for cooperation, one usually assumes that politicians care exclusively about office in presidential regime and about office and policy in parliamentary regimes.

I could go on. Party discipline would be an obvious issue to tackle now. It is common to argue that disciplined parties are foreign to presidentialism and a necessary feature of parliamentarism. The structure of the argument depends on the absence(presence) of incentives for cooperation in presidential(parliamentary) regimes. So there is no need to go over all these arguments. The objection parallels the one made above. Empirically, the claim is also false. Just consider Venezuela before Chávez and Italy and France Fourth Republic. There are disciplined parties in presidential regimes and non disciplined on parliamentary.

The strategies of the relevant actors, above all politicians, are constrained by several other institutional features. In a sense, forms of government is too macro and general to define strategies. Actually, comparativists do not work at this general level. They do fill in the details and, most often, they derive these consequences from the institutional details of the cases they know better. In fact, to take the United States and England as the paradigmatic cases of presidentialism and parliamentarism is a common practice in the field.

More than that, one tends to confound traits of the American political system with its form of government, and, to do the same with England.

This is clearly the case, just to illustrate my point, of the frequently cited paper by Moe and Caldwell (1994). The authors pose the following question:

Take bureaucracy. Would a parliamentary system tend to generate a bureaucracy that is markedly different—in structure, performance, accountability—from what we should find under separation of power? (172)

The authors provide a positive answer. Bureaucracies differ as a consequence of the form of government. Besides posing the question in such a general terms, Moe and Caldwell explicitly attempt to base their answer in a deductive mode. The difference follows from the very principle that distinguishes the two forms of governments. As they (1994 172) put it

When a nations choose a presidential or a parliamentary from, they are choosing a whole system, whose various properties arise endogenously —whether they like it or not—out of the political dynamics that their adopted form sets in motion. Attractive structures of government may be impossible to achieve, unattractive ones impossible to avoid. Presidential and parliamentary systems come with their own baggage. They are package deals.

But, when comes to derive what each system puts in motion, the authors basically describe two cases: the United States and Britain. With regard parliamentarism, they explicitly inform the reader that they will concentrate on the “classic Westminster case” (177). As of presidentialism, the picture is even worse, since their commentaries is not preceded by a similar restrictive warning.

Being schematic, their conclusion is that bureaucracies are less effective under presidentialism than under parliamentarism. But, the conclusion is not derived from characteristics that define these forms of government. In the case of parliamentarism, their argument relies heavily on characteristics of the British system that are not necessarily found in all parliamentary systems: a two party system, highly cohesive parties and “unchecked authority”. On their account, this is a system with real power alternation and in which is easy to change the status-quo. Hence, the conclusion: “Agencies and programs cannot be insulated from opponents and future authorities by embedding an intricate ex ante control structure in the law” (177). It may be true that given a Westminster system, all these consequences follow. But the Westminster system is not the only form of a parliamentary system. The crucial features from which the bureaucratic characteristics are derived —power alternation and absence of a Constitution—do not define parliamentarism.

The same is true for their argument about the bureaucratic structure under presidentialism. Their argument is based upon the conflict between the executive and the legislative and the way each Power tries to shape the organization of the government. Key for their argument is that both act independently and with different objectives on that matter. Congress colludes with interest groups whereas presidents act unilaterally. Interest group want agencies that do not work since they fear the State and the possibility that an adversary interest group captures the bureaucracy. Hence, they design bureaucratic institutions that do not work. The president wants the agencies that Prime Minister can get, but all he can do is to add a new layer of agencies over

the ones Congress and groups have already created. Thus, although presidents are “the only champion of effective, responsible government”, their efforts and initiatives end up contributing to “create still more bureaucracy and heighten complexities and internal contradictions of the American administrative system” (176)

The conflict over the control of the bureaucracy is not a necessarily feature of the separation of power systems. Not all presidentialisms are like the American. Separation of power does not necessarily imply that Congress and the President will dispute the control over the bureaucracy.

Moe and Caldwell are not alone on trying to relate forms of government and bureaucratic performance. Other attempts incur in the same mistake: to confound features of the US and of the British system as if they were necessary aspects of the forms of government they adopt. For instance, Ackerman (2000 695) argues that parliamentary regimes foster functional specialization: a bureaucracy that knows that it will have to serve different masters along the road will want to “cultivate a reputation for neutral competence. Whatever goals have been established by the cabinet, the senior civil servant stands ready and eager to implement them.” The premise of the argument is that the “PM and her cabinet ministers have their eyes firmly fixed on the next elections. If they lose, then the fate of all their precious legislative initiatives is at mercy of their political opponents. As a consequence, they want knowledgeable and effective implementation from the bureaucracy, and they want it fast”. (695). In this world, bureaucrats have to prove that they can provide the solutions both sides want fast. Hence they do not take sides, they are neutral and want to prove their competence. That would make them more valuable.

Again, a two party system with clear-cut rotation and in which the status quo can be changed at the majority’s will with few constraints are not characteristics of the parliamentary system. In Italy and Japan, one party controlled the government for forty years or so. Even in England, rotation in power has not been as fast as assumed by the argument. The conservatives held power for fifteen years or so, and the Labour has been in power for almost ten years. In fact, this tantamount to hold constant the variables Strom (1990) invokes to explain minority governments: the competitiveness and decisiveness of the electoral process. Besides, under coalition government, the standard argument goes, voters do not know which party should be held responsible for government performance.

The critical assessment of the American bureaucracy Ackerman offer does not extend to all separation of power system. American bureaucracy, according to Ackerman, is highly politicized. Ackerman agrees with Moe and Caldwell, the politicization of the bureaucracy has its roots in the struggle between the executive and the congress over its control. The difficulties to change legislation contribute to create an autonomous bureaucracy. Again, these are not features of all separation of power systems.

Actually, Ackerman initiate his discussion of this topic noting what is peculiar of the United States scenario:

At the time they were writing the Constitution in 1787, the Founders did not have the slightest idea that the American government would one day employ millions of officials exercising a bewildering variety of functions” (688).

Hence, a bureaucratic or administrative state was not part of the original Constitutional design. The executive-legislative struggle over the control of the bureaucracy is a consequence of this constitutional silence. Hence, most of the bad characteristics of the American bureaucracy Ackerman attributes to the separation of power systems are, in fact, specific to the US. They follow from the incompleteness of the American constitution. I take this issue in the concluding section.

To sum up, there are few, solid, and consequential outcomes one may derive from the choice of the form of government. The usual arguments found in this extensive literature violate the essence of the neo-institutionalism as a method: behavioral assumptions vary with the institutional set up, so that the divergence in outcomes are not derived from the institutional set up, but from the implicitly assumed variation on behavior. The second usual mistake is to fill *blank spaces* with country specific traits. This is also a problem with institutionalism since it indicates that strategies cannot be derived from macro institutions. There are too many strategies to follow under equilibrium. The result is indeterminacy.

## V PRESIDENTIALISM AND BUREAUCRATIC AGENCIES

Recent scholarly work has emphasized that the American president is much more powerful than the constitutional text indicates (Moe and Howell 1989, Mayer 2000, Mayer 2002, Howell 2003). Political scientists have recently discovered the importance of presidential unilateral power, expressed mainly by the issuing of Executive Orders.

Following the arguments put forth by West and Cooper (1989 581), one may note that a new phase of the presidential power aggrandizement is under way. The authors argue that the recent American administrative process is an arena for competition between the President and Congress. According to these authors view, recent Supreme Court decisions have favored the Executive at the expenses of the Legislative with important “implications both for the character of policy making and for the distribution of power within our political system.” West and Cooper argue that a new paradigm of bureaucratic control has emerged, one that “advocates centralized presidential control over the agency policy making while prescribing a passive role for Congress”

West and Cooper (1989 586) relate the emergence of this new paradigm with the characterization of the American political system as fragmented and lacking coordination. In the authors words

The new model of political oversight has been a natural response to conventional view about the effects of delegated authority. The exercise of broad discretion by administrative agencies has obviously been difficult to reconcile with the tenets of representative democracy and separation of powers. Beyond this, it has been frequently identified as a source of malaise in the policy-making process.

The new paradigm is a response to this malaise, to the

equation of delegated authority with a fragmented policy-making system that is inherently unaccountable and uncoordinated. The popularity of the prescription for centralized presidential control over the administrative process is quite understandable given the pervasiveness of such indictments.

Hence, as legislative studies made its way to comparative politics, popularizing one particular view of the conventional wisdom, the American political system entered a new phase. A phase in which the balance of power tilted in the presidential direction. To centralize the policy-making process in the presidential hands, since at least the Reagan presidency and the issuing of the Executive Orders 12291 and 12498, is the current trend. The Supreme Court has supported this trend in key decisions. As I noted previously, the president has been the omitted actor in formal models of politics.

That has important consequences for the comparative analysis of separation of power systems. In constitutional terms, American presidents are weak. Presidents, by the very definition of presidential system (see Shugart and Carey 1992), hold legislative powers. The American presidents legislative power is confined to a reactive legislative power. More than that, the American president is confined to the weakest form of veto power: the package veto. Most presidents have active legislative powers, as the exclusive prerogative to initiate legislation in certain areas, control over the introduction and execution of the budget, and last but not least, decree power. Hence, most presidents are powerful than the American.

Hence, Tsebelis (1995 325) is wrong when he asserts that

In parliamentary systems the executive (government) controls the agenda, and the legislature (parliament) accepts or rejects proposals, while in presidential systems the legislature makes the proposal and the executive (the president) signs or vetoes then.



The relation between Executive and Legislative varies with the legislative powers the Constitution assigns to the president<sup>17</sup>. Few presidents in existing systems cannot initiate legislation. Not only are presidents often endowed with the capacity to initiate legislation; often they also have the exclusive right to initiate legislation in some areas (such as appropriation and budgetary matters), whereas legislators are restricted in their capacity to amend bills in these areas. Hence, contrary to Tsebelis (1995), presidents can do much more than simply sign or veto bills proposed by the legislative.

In addition, some presidents also have decree-power; they are constitutionally able to unilaterally alter the status quo. Even though there is considerable variation in the specifics of presidential decree-power (Carey & Shugart 1998), often presidential decrees enter into effect first (whether immediately or not) and the legislature acts second. The legislature acts a posteriori, rejecting, amending or accepting the new status-quo brought about by the executive decree.<sup>18</sup> Given decree-power, therefore, a president can dictate the legislative agenda by forcing the legislature to make a decision on some matter it could, otherwise, not have appreciated. Thus, no group in the legislature, not even the majority, can “close the gates” for a presidential initiative made by decree.

Note that the power to impose an agenda does not imply that presidents will always prevail against the will of the majority. In fact, as Huber (1996) shows, since a legislative majority can always reject a presidential decree, a model of executive-legislative conflict is unable to explain why the executive would ever make use of decrees. There are, of course, strategic advantages that the agenda setter may explore. But as Krehbiel (1988 270) has argued, these are not properly anti-majoritarian devices.<sup>19</sup>

In addition, the government’s legislative and agenda powers, among which decree-power, need not be interpreted as means for solving “vertical” conflicts, that is, conflicts between the government and the opposition. Rather, as argued by Huber (1996), the government’s legislative powers are also means for solving “horizontal” conflicts, that is, conflicts between the government and its supporters. In this sense, these are ways that the government has to protect the cohesion of its coalition against the opportunistic behavior of its members.<sup>20</sup>

It follows from this that, because of presidents’ legislative powers, separation of powers in presidential regimes is not as complete as it is usually considered to be. Presidential legislative powers are commonly interpreted in the context of the US constitution, that is, as means to create checks and balances. But, as we just have seen, the legislative powers of the executive are not only a mechanism for checking the power of the majority or imposing the will of the president. They are also weapons of the majority. Therefore, the fusion of executive and legislative powers is not absent from presidential systems.

Note that this interpretation is at odds with Shugart & Carey's (1992) view according to which presidential systems that endow presidents with considerable legislative powers —what they call strong presidents —have greater probability of experimenting a breakdown. They argue that strong presidents will have smaller incentives to negotiate with congress and, thus, paralysis and crisis are more likely. This is so because strong presidents have the institutional means to impose their will on congress; weak presidents, in turn, know that they have no other alternative than to negotiate. This argument, however, is based on the “vertical conflict” model and disregards the possibility that the president will try to organize a majority in congress. But once the possibility that the president and the majority have overlapping preferences is considered, then legislative agenda powers need not imply paralysis, crisis and eventual breakdown.

The organization of congress and the degree of control the executive has over the legislative agenda does influence the behavior of individual legislators. They act in a constrained environment. If they want to influence policy, they have to do so according to the rules of procedure of the body they belong to, and in the terms set by the president. Thus, for example, the incentives to cultivate the personal vote that stem from the electoral arena may be entirely neutralized in the legislature though a distribution of legislative rights that favors the executive. For this reason, we cannot deduce, as it is commonly done, the behavior of legislators from electoral and party legislation alone.

In this context, the case of Brazil is of central theoretical interest for it provides an example of the far reaching effects of the centralization of the decision making process. The system produced by the 1988 constitution is frequently cited as *the* example of bad institutional design (Ames 2001). All of the institutional choices that should not be made, it seems, were made in 1988: a strong presidential regime (one of the strongest in the world according to Shugart & Carey's 1992 155 rank); proportional representation formula for legislative elections with high district magnitude; very permissive party and electoral legislation (e.g., open-list and low party control over access to the ballot). In such a system, the party system is bound to be fragmented and presidents can be virtually certain that their party will not control a majority of seats in both legislative houses. And even if they did, parties would be highly undisciplined thus making the majority status of the president a mere formality (Sartori, 1994 113; Mainwaring 1991). Hence, to have their agenda approved, presidents would use their strong legislative powers, which would lead to conflict and paralysis. To paraphrase Sartori (1997), the system created in 1988 was nothing but hopeless.

Yet, the performance of the post-1988 Brazilian regime is completely at odds with what we would expect to find on the basis of this institutional analysis. Brazilian presidents of this period have had great success enacting their legislative

agenda. Presidents introduced 86% of the bills enacted since 1988 and the rate of approval of the bills introduced by the executive was 78%. Presidents have formed coalitions to govern, and have been able to reliably obtain the support of the parties that belong to the government coalition in approving its legislation: the average discipline of the presidential coalition, defined as the act of voting in accordance with the public recommendation of the government leader in the floor, was 85.6%. This support is sufficient to make a presidential defeat in a roll call a considerably rare event. Thus, despite the “centrifugal” characteristics of Brazilian presidentialism, as indicated by the party and electoral legislation, presidents have been able to govern relying on the support of a disciplined coalition (Figueiredo & Limongi 2000).

This outcome is a result of both the way the Brazilian congress is organized and the president’s ability to control the legislative agenda. The Brazilian congress is highly centralized. Legislative rights heavily favor party leaders, who are taken to be perfect agents of their caucuses (*bancadas*) when it comes to most procedural decisions (such as the request for roll-call votes, the closing of debates and, most importantly, the designation of a bill as urgent for purposes of appreciation). The urgency request is a kind of “discharge petition:” it removes the bill from the committee and forces its immediate (24 hours) deliberation by the floor. Bills that are appreciated as urgent cannot be freely amended: only amendments signed by 20% of the lower house are accepted, which implies that only those amendments supported by party leaders will be considered. As Figueiredo & Limongi (2000:157) have shown, the approval of the urgency petition, in turn, is highly associated with the success of a bill. Centralization, thus, deprives members of congress of the legislative rights they need to control in order to influence legislation.

The Brazilian presidents, thanks to their constitutional legislative powers, have a direct influence on the definition of the legislative agenda. Using its decree-power, the executive places on the agenda what it deems to be the most relevant and pressing issues. The president can also influence the pace of ordinary legislation by requesting urgency for the appreciation of specific bills (which will give each house 45 days to deliberate on them). The president has also the exclusive right to initiate legislation related to the definition of the budget, taxation and public administration. Therefore, the executive monopolizes the legislative initiative on the most crucial areas of policy-making.

Hence, it is via the participation in the government that individual legislators will obtain access to resources they need for political survival: policy influence and patronage. Leaders bargain with the executive: they exchange political support (votes) for access to policy influence and patronage. The executive, thus, provides party leaders with the means to punish backbenchers who do not follow the party line: their share of patronage may be denied. The executive, in turn, given the

resources it controls, is in a very advantageous position. Party leaders become, in fact, the main brokers in the bargaining between the executive and the legislators. Contrary to what is currently assumed about Brazil, presidents do not need to bargain on a case-by-case basis. They are in a position to demand support for their entire legislative agenda. Once the government is formed and benefits are distributed among the members of the coalition, the president, with the help of party leaders, may threaten representatives and actually punish those who do not follow the party line. Hence, to say it once more, the actual pattern of legislative-executive relation in Brazil's presidential regime is rather different from what one would expect to find if we were to deduce it from its electoral and partisan legislation.

It should be clear by now that separation of powers does not necessarily imply decentralized decision-making. Institutional analyses that stress the negative effects of separation of powers, and that point to specific, often restrictive, electoral laws as a corrective to these effects, entirely miss the point. Presidentialism does not necessarily imply, or require, decentralized decision-making and conflict between the executive and the legislative. Once one assumes the possibility that coalition governments may also exist in presidential regimes, the degree of overlapping between the executive and legislative majorities has to be adjusted.

Presidential control over the agenda becomes a weapon to be used *by* the majority and not *against* the majority. We can see, thus, that presidents are not necessarily as distinct from prime minister as it is normally assumed. As we showed above, outcomes that are usually associated exclusively with parliamentarism, such as executive success and dominance over the legislative output obtained through disciplined parties, can be found even in "hopeless" presidential regimes such as Brazil's.<sup>21</sup>

Brazil and the United States are both presidential systems. Yet, they are radically different systems. The conventional wisdom in the comparative field, for the reasons I tried to spell out on previous sections, tend to equate both systems. Moreover, comparative institutionalism is badly equipped to understand the role of the president in the Brazilian system.

The Brazilian and the American independent agencies have been created in different contexts. Although discussing the European case, Majone (1997 1) account explains the origins of regulatory agencies in Brazil. According to this author,

Since the late seventies, European governments have been forced to change their traditional modes of governance in response to such trends as increasing international competition and deepening economic and monetary integration within the European Union. Strategic adaptation to the new realities has resulted in a reduced role for the positive state and a corresponding increase in the role of the regulatory state: rule making instead of taxing and spending.

One just needs to adapt the quotation. First correct the date: the change took place later in Brazil. Mid to late nineties is the correct date. The question then is to explain why Brazil was a latecomer to this process. Second, monetary integration was not related to European Union but it was a factor. What remains to be explained are the consequences of these changes in the mode of governance. This a whole new research agenda that intend to embrace in the near future.

## VI CONCLUDING REMARKS: THE LIMITS OF INSTITUTIONALISM.

The variables chosen by comparativists are too macro to have such a precise influence over the strategies of all the relevant actors. Institutions do matter. They do constrain the set strategies political actors pursue. But, there are more institutions than forms of the government and electoral laws that do matter. Besides, institutions do interact with one another and there is much that is left to be determined along the way. Besides, we will not be sure that we have specified all the relevant strategies available to the actor. One cannot define these strategies looking exclusively to the form of government. Other institutions, most of them country specific, will also matter. Moreover, path dependence will also play a role since there are different possible answers to non-specified contingencies.

One aspect of these observations, what transaction-cost analysis refers to as the incompleteness of contracts, is of special interest. It questions the basis of institutionalism as a method. Constitutions and statutes, like contracts, cannot specify every possible contingency. Hence, strategies may not be precisely defined *ex ante*. Avinash Dixit (1998 20) observation is a good point to start:

If constitutions are contracts, they are very incomplete ones. They do not spell out the rules and procedures to be followed in every conceivable instance in precise detail. They leave much to be interpreted and determined in specific future eventualities

The point is related to Ackerman observation about the American constitution quoted at the end of the fourth section. The American constitution precedes the advent of the administrative state. Besides, as Moe and Howell (1999 850) note

The Constitution sets out the entire design of American government in just a few brief pages and almost entire lacking in detail. (...) The actual power of the three branches, then, both in absolute sense and relative to one another, cannot be determined from the Constitution alone. They must of necessity, be determined in the ongoing practices of politics. And this ensures that the branches will do more than struggle over day-to-day policy making. They will also engage in a higher order struggle over the allocation of power and the practical rights to exercise it.

Hence, the different branches of the government fight to control what contract analysis calls the residual power. Each branch fights to incorporate as its duty what is left ambiguous by the Constitutional text. Note that a successful claim over the non-specified part of the institutional contract may lead to a new layer of institutional power. A successful claim over the residuum may lead to its institutionalization.

Of course, this is not true only for the American constitution. This happens everywhere. Bagehot's account of the English constitution, of its transformation, is an assessment of how profound such changes may be.

Clearly, this defies comparative analysis based upon macro variables as form of the government, electoral laws and so on so forth. Within each of these groups, there may be too much variation. It follows that one may not be able to specify common strategies and, thus, derive outcomes. In these terms, institutionalism as a method may be condemned to failure.

## NOTES

1 Basically, that all actors have single peaked preferences. Note that this is not an assumption about individuals, but about the collectivity given individual preferences must be related in a precise way.

2 I intend to develop this section. I want to discuss that for noncooperative game theory, one does not simply aggregate preferences. Beliefs about strategies are endogenously generated. Hence, there is space for deliberation in game theoretic models. Besides, recent developments in economy theory, the so called transaction costs analysis, indicates that contracts cannot specify all contingencies. That limits the reach of institutionalism as a methodology.

3 See Ferejohn 1986 for thoughtful discussion of the complexities involved. Shepsle and Weingast (1987) failed in their attempt to model "the institutional foundations of the committee power". The proposed model has noncooperative tone but it did not survive Krehbiel's (1987) criticism.

4 I will cite the omitted passage below.

5 In this account, policies are not set by special interests either. Hence this view differs from the one proposed by the Chicago School. The latter is a capture explanation: capture of the agencies by the special interests. The regulated industries use the power of the state to extract benefits. As Moe notes, the Chicago School does not model institutions. They are incorporated as black boxes to indicate that they do not matter. The bureaucracy also does not play any real role either.

6 I can't find where.

7 This is the omitted part in the quoted passage above.

8 This is the case of Becker (1983). He argues that voters face high costs to get political information. These costs exceed the returns they can obtain via their vote. Thus, it is rational to be politically ignorant.

9 This section relies on Cheibub and Limongi 2002.

10 See Strom (1990:8-9) for a summary of findings. See also Laver and Schofield (1998:70) and Cheibub (1988).

11 See also Laver and Schofield (1998) for a discussion of minority governments in European parliamentary regimes and for an argument for the inappropriateness of the “majoritarian imperative” for the analysis of these systems.

12 These numbers are drawn from Cheibub 1988.

13 The factors that led to this transformation are complex and are beyond the scope of this paper. It is sufficient to say here that a central factor is the fragmentation of the party system that resulted from the December 1973 election. In that election, the four traditional parties that had dominated Danish politics since the early 1900s (Conservatives, Liberals, Radical Liberals and Social Democrats) obtained about 60% of the seats, down from over 90% in the previous parliament. Three parties obtained representation for the first time (Progress Party, Christian People's Party, and Center Democrats), and two parties (Communists and the Justice Party) obtained seats for the first time since 1957. Overall, the new parliament had 10 parties, twice as many as it had prior to the elections. The pattern of government formation that resulted was also different. Whereas no single party majority government has ever been formed since 1945, prior to 1973 half of the governments were single party minority governments, and another 40% were majority coalition governments. After 1973, however, no majority government has been formed and 55% of the governments were coalition governments.

14 The electoral reform approved prior to the June 18, 1989 election, the first in the series of three, did make the government formation process more complex by increasing the degree of proportionality in the system and thus favoring smaller parties. According to analysts, this reform “was widely seen as designed to reduce the likelihood of New Democracy forming a one-party government after the June election” (Keesing Contemporary Archives, on-line, volume 35, March 1989).

15 Governments are marked by the change of the President, by the change in the partisan composition of the government, or by changes in the share of seats held by governments parties in congress due to legislative elections. We find that the third criterion is problematic since it implies that no government survives a legislative election. Unfortunately it is not possible to distinguish from the published numbers by how much this inflates the counting.

16 Studies of coalition government under presidentialism are still few. Other references include Amorin Neto (1998), Fowleraker (1998) and Altman-Olin (1999).

17 This and the next paragraphs rely heavily on Cheibub and Limongi 2002.

18 Note that often rejection of a presidential decree does not mean a return to the status quo ante. Even if there is a majority in favor of the status quo, once the decree has been in effect, rejecting it may have become an unattractive or unavailable alternative.

19 It is true that, since it immediately alters the status quo, the decree power will increase the power of the agenda setter. When legislatures have to vote on ordinary propositions, legislators compare the status quo (SQ) with the situation to be created by the proposition. In the case of an executive decree, the legislator compares the situation created by the decree (D) with the new situation created by rejecting a decree that has been in effect for some time (SQD). If the preferences of the majority are  $SQ > D > SQD$ , then the majority will approve the decree. If the preferences of the majority are  $SQD > D$  (assuming that SQ is no longer a viable alternative), then the majority will reject the decree.

20 It is interesting to note here that there seems to be no association between minority status and the use of decree-power (Figueiredo & Limongi 1998).

21 Now, if presidential regimes are not all alike, neither are parliamentary systems. That the government will control the legislative agenda does not follow from the definition of parliamentarism. Neither is it necessary that the

legislative rights of private members be curtailed in parliamentary regimes. Committees may have considerable powers in parliamentary assemblies and may erect barriers to the executive agenda.

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